

ELECTION AND TRAVERSE

Applicants elect claims 49-51 and 55 for prosecution, with traverse.

The Examiner has restricted the application as containing claims directed to various patentably distinct species of the claimed invention. In particular, the Examiner has restricted the claims into the following groups:

Claims 49-51 and 55	Directed to different species of the generic feature of the interactive message. Claim 45 is generic
Claims 56 and 57	Directed to different species of the generic feature of associating an expiration date with the interactive message. Claim 45 is generic.
Claims 72-74 and 78	Directed to different species of the generic feature of the interactive message. Claim 71 is generic
Claims 79 and 80	Directed to different species of the generic feature of the interactive message. Claim 71 is generic

The Examiner has failed to address the remainder of the claims, *i.e.*, claims 52-54, 58-71, 75-77 and 81-88. Accordingly, Applicants respectfully request the Examiner to clarify the status of the remainder of the claims.

Moreover, it is respectfully submitted that the Examiner has incorrectly restricted the present application. It is well established law that claims restricted to different species must be *mutually exclusive*.¹ In other words, the restricted species cannot occur in the same embodiment. The MPEP lays out the general test for species as follows:

The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first.

However, the "different species" restricted by the Examiner may clearly occur in the same embodiment, and as such are not *mutually exclusive*. For example, an interactive message directed to a specific physician may include a question asking the physician if the physician would like further information on a certain medical topic (claim 49), and the same message may also be associated with an expiration date, after which the message will expire (claim 56). In another example, the interactive message may include an inquiry whether said physician wishes

¹ See MPEP 806.04(f)

to receive Continuing Medical Education (CME) at the handheld computing device (claim 51), and may also have an associated expiration date, after which the message will be removed from the handheld computing device (claim 57). Therefore, it is clear that the Examiner's species restriction is improper, as the "species" restricted by the Examiner are not *mutually exclusive*.

In light of the above, it is respectfully requested that the Examiner withdraw this species election and proceed to examine all of the pending claims.

CONCLUSION

No fees are believed due in connection with this response. However, the Commissioner is authorized to charge any required fees, or credit any overpayment, to Morgan, Lewis & Bockius LLP Deposit Account No. 50-0130 (order number 061018-0007-US).

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Respectfully submitted,


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